

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 29 July 2013

Public Authority: London Borough of Bexley
Address: Civic Offices
Broadway, Bexleyheath
Kent
DA6 7LB

Decision (including any steps ordered)

1. The complainant requested a copy of an independently commissioned arboricultural report together with details of the cost to the public authority to provide the report. The report had been disclosed by the time he complained to the Commissioner. The cost of providing the report was subsequently disclosed during the course of the investigation.
2. The Commissioner finds the public authority in breach of regulation 5(2) for failing to disclose the report and the cost of providing it within 20 working days of the date of the request.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 3 September 2012, the complainant wrote to the public authority and requested information in the following terms:

'.....in respect of the arboricultural report commissioned by the Council I request a copy under the Freedom of Information Act 2000 together with details of the cost to the Council to provide the report.'
5. The public authority responded on 3 October 2012. It claimed that the report was exempt from disclosure on the basis of section 22 FOIA.

6. The complainant requested an internal review on 14 February 2013.
7. Following the internal review the public authority wrote to the complainant on 13 March 2013. It explained that the request ought to have been considered under the terms of the EIR rather than FOIA. It however upheld the original decision to withhold the report, this time on the basis of the exception at regulation 12(4)(d) EIR. The public authority did not address the second part of the request for details of the cost to provide the report.

Scope of the case

8. The complainant had initially contacted the Commissioner on 31 January 2013 to complain about the way his request for information had been handled. He was however advised to submit a request for internal review to the public authority and re-submit his complaint if he remained dissatisfied with the public authority's response following the internal review.
9. On 15 March 2013 the complainant wrote to the Commissioner again to complain about the public authority's handling of his request. However, the aboricultural report he requested had been provided to him by the public authority on 14 March 2013¹, i.e. a day before he wrote back to the Commissioner.
10. The ground for his complaint in so far as it is relevant to the Commissioner's remit under the EIR and the FOIA is that the report should have actually been provided to him by the public authority before 14 March 2013. He specifically queried why report was deemed incomplete at the time of his request given that the copy of the report he subsequently received was dated 7 November 2012.
11. During the course of the investigation, the complainant made the Commissioner aware that he was also complaining about the public authority's failure to address the second part of his request for details of the cost to provide the aboricultural report.
12. However, on 2 July 2013, the public authority provided the complainant with details of the cost to provide the report.

¹ The public authority claims that a copy of the report was sent to the complainant earlier in 2013 but was unable to confirm the date. It did however acknowledge that a copy was also sent on 14 March 2013.

13. Given that the report was disclosed prior to the complaint and the cost of providing the report was also subsequently disclosed, the Commissioner considers that the scope of the investigation is whether the public authority was in breach of its obligations under regulation 5(2).

Reasons for decision

Regulation 5(2) EIR

14. By virtue of regulation 5(2), a public authority is required to make information available as soon as possible following a request and no later than 20 working days.
15. The Commissioner finds the public authority in breach of regulation 5(2) in respect of the time taken to disclose a copy of the report and also regarding the time taken to disclose the cost to the public authority of providing it.

Right of appeal

16. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

17. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

18. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Alexander Ganotis
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